

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0959-03
Bill No.: SCS for HB 289
Subject: Workers' Compensation
Type: Original
Date: April 14, 2017

Bill Summary: This proposal modifies provisions relating to workers' compensation.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Total Estimated Net Effect on General Revenue	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Workers' Compensation Administration Fund	Up to (\$64,333)	Up to (\$128,665)	Up to (\$128,665)
Second Injury Fund	Up to (\$385,994)	Up to (\$771,987)	Up to (\$771,987)
Legal Expense Fund	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown
Total Estimated Net Effect on Other State Funds	\$0 to Unknown or Up to (\$450,327)	\$0 to Unknown or Up to (\$900,652)	\$0 to Unknown or Up to (\$900,652)

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 10 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Total Estimated Net Effect on FTE	0	0	0

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Local Government	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown

FISCAL ANALYSIS

ASSUMPTION

Officials at the **Department of Labor and Industrial Relations (DOLIR)** assume this proposal will have a negative fiscal impact on their organization.

The Division of Workers' Compensation projects a loss of revenue for both the Workers' Compensation Administrative Fund and the Second Injury Fund. According to the Department of Revenue, in December 2016 there were 137,786 S corporations located in the state of Missouri which would fall under consideration as an S corporation within the tax law. Of the 137,786 S corporations located in Missouri, 34,442 are Limited Liability Companies which are treated as an S corporation under the tax law.

For the purposes of this estimate, DOLIR has used the following information:

- The premium determination for executive officers is calculated using the payroll amount of \$40,600, effective Jan. 1, 2017.
- The 2016 rate for officers and clerical class is 23 cents per \$100 of workers' compensation payroll. The estimated premium for one officer is \$93.38.
- If all of the S-Corporations/LLCs have at least one shareholder who has a 40% or greater interest in the corporation, and that shareholder individually elects to reject coverage, and assuming an average experience modification factor of 1.00, there would be a reduction in total premium of at least \$12,866,457 for an entire fiscal year (137,786 x \$93.38).
- The Workers' Compensation Administrative tax and surcharge rate for CY2017 is 1%. The Second Injury Fund surcharge rate and supplemental surcharge rate is a total of 6%.

The Department of Labor and Industrial Relations estimates a decrease to the Workers' Compensation Administrative Fund of \$64,333 and to the Second Injury Fund of \$385,994 in FY 2018. In FY 2019, the decreases estimated at \$128,665 for the Administrative Fund and \$771,987 for the Second Injury Fund. The chart below shows the calculations used to arrive at these estimates.

ASSUMPTION (continued)

Revenue Loss Calculations		
Number of S-Corporations and LLCs Treated as S-Corps	137,786	
Payroll Amount for Executive Officers/Clerical	\$40,600	
Workers' Compensation Rate per \$100 of Payroll	\$0.23	
Estimated Premium for 1 Shareholder	\$93.38	@ \$100 of payroll
Total Estimated Premiums	\$12,866,457	Using average modification factor of 1.00
Workers' Compensation Administrative Tax Rate	1%	
X Estimated Premium =	\$128,665	Full Year FY 2019
X .50 =	\$64,333	Six Months for FY 2018
Second Injury Surcharge Rate + Supplemental Surcharge	6%	
X Estimated Premium =	\$771,987	Full Year FY 2019
X .50 =	\$385,994	Six Months for FY 2018

If the number of shareholders who opt out of workers' compensation coverage increases or decreases, the impact to the Workers' Compensation Administrative Fund and Second Injury Fund would change accordingly.

Oversight assumes this proposal would authorize a shareholder with at least 40% interest in an S corporation to reject workers' compensation coverage. Oversight also assumes the proposal could become effective January 1, 2018. Since it is unknown how many shareholders fall within this category, for fiscal note purposes, Oversight will use the DOLIR's estimate of loss to the Workers' Compensation Administrative Fund and the Second Injury Fund. Oversight will include a loss of six months (50% of full year loss) for FY 2018 and a full year as maximum possible losses for FY 2019 and FY 2020.

Officials at the **Office of Administration - General Services (OA-GS)** understands, and therefore assumes, that the legal standard in 287.780 creates a slightly higher burden on plaintiffs seeking damages for retaliatory discharge or discrimination. This higher burden may result in either fewer claims for damages being made against state agencies or employees, or in more successful legal defense against such claims, either of which could result in potential savings to the Legal Expense Fund.

ASSUMPTION (continued)

However, the amount of the potential savings resulting from this proposal cannot be reasonably estimated as this language might create a new legal standard, subject to judicial interpretation, and there is no readily available information that could assist in forming a rational basis for estimating savings. In addition, the number of potential claims, the severity of those claims, and the ultimate costs associated with any settlement or judgment resulting from those claims cannot be forecasted with any degree of assurance to their accuracy.

Office of Administration—General Services assumes that no any state employee would violate the proposal. Therefore, it is assumed that no successful claims will be made against the Legal Expense Fund and the proposal would thus have no fiscal impact upon the Office of Administration—General Services. However, should that assumption prove to be incorrect, significant costs could be incurred by the Legal Expense Fund.

Oversight will show a potential savings to the Legal Expense Fund of \$0 to Unknown based on the response from OA-GS.

Officials at the **Office of Administration (OA)** assume this proposal could have a potential savings to the state workers' compensation program for state employees which is based on the following information provided by OA.

§287.390 (1&2) – The bill would provide that if a claimant does not obtain a permanent disability rating from a second physician within 6 months, any settlement will be based on the first such rating. Because initial ratings are often lower than second ratings, and because currently second ratings often are not obtained within 6 months, the proposal could lead to cost savings. The amount of such savings, if any, cannot be estimated as it would depend on the facts and circumstances of each particular case and moreover depends on whether claimants (and their attorney and physicians) would change their current behavior and obtain second ratings more quickly (i.e. within 6 months of the first).

General Services assumes that the first disability rating obtained from the employer's physician or physician selected by the claimant will be a lower rating than a second rating obtained by the claimant.

Oversight will not show a fiscal impact to OA based on their response and assumption the second disability rating would be lower than the first rating.

ASSUMPTION (continued)

Officials at the **Department of Corrections** defer to Office of Administration - General Services for fiscal impact.

Officials from the **Office of the Secretary of State (SOS)** state many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

Officials at the **Department of Conservation**, the **Department of Insurance, Financial Institutions and Professional Registration**, the **Joint Committee on Administrative Rules**, the **Office of Administration - General Services**, the **Office of Prosecution Services**, the **State Public Defender's Office**, the **Department of Public Safety - Highway Patrol** and the **Department of Transportation** each assume this proposal will not have a fiscal impact on their respective organizations.

In response to a previous version of this proposal (959-01), officials at the **Office of Administration - Accounting**, the **Office of Administration - Facilities Management, Design and Construction**, the **Office of Administration - Purchasing**, the **Office of Administration - Information Technology System Division**, the **Office of Administration - Division of Purchasing and Materials and Management** each assumed the proposal will not have a fiscal impact on their respective organizations.

Officials at **Callaway County** assume this proposal would not have a fiscal impact on their organization.

Officials at the **St. Louis County Department of Justice Services** assume this proposal would not have a fiscal impact on their organization.

Officials at the **Missouri State University**, the **Northwest Missouri State University**, the **State Technical College of Missouri**, the **University of Central Missouri**, and the **University of Missouri** each assume this proposal will not have a fiscal impact on their respective organizations.

ASSUMPTION (continued)

Officials at the school district **Kirksville R-II** assume this proposal would not have a fiscal impact on their organization.

Officials at the **Attorney General's Office** did not respond to Oversight's request for fiscal impact.

Officials at the following cities: Ashland, Belton, Bernie, Bonne Terre, Boonville, California, Cape Girardeau, Clayton, Columbia, Dardenne Prairie, Des Peres, Excelsior Springs, Florissant, Frontenac, Fulton, Gladstone, Grandview, Harrisonville, Independence, Jefferson City, Joplin, Kansas City, Kearney, Knob Noster, Ladue, Lake Ozark, Lee Summit, Liberty, Louisiana, Maryland Heights, Maryville, Mexico, Monett, Neosho, O'Fallon, Pacific, Peculiar, Pineville, Popular Bluff, Raytown, Republic, Richmond, Rolla, Sedalia, Springfield, St. Charles, St. Joseph, St. Louis, St. Robert, Sugar Creek, Sullivan, Warrensburg, Warrenton, Webb City, Weldon Spring and West Plains did not respond to **Oversight's** request for fiscal impact.

Officials at the following counties: Andrew, Atchison, Audrain, Barry, Bollinger, Boone, Buchanan, Camden, Cape Girardeau, Carroll, Cass, Christian, Clay, Cole, Cooper, DeKalb, Dent, Franklin, Greene, Holt, Jackson, Jefferson, Johnson, Knox, Laclede, Lawrence, Lincoln, Maries, Marion, McDonald, Miller, Mississippi, Moniteau, Monroe, Montgomery, New Madrid, Nodaway, Ozark, Perry, Pettis, Phelps, Platte, Pulaski, Scott, Shelby, St. Charles, St. Louis, St. Francois, Taney, Warren, Wayne and Worth did not respond to **Oversight's** request for fiscal impact.

Officials at the following colleges: Crowder, East Central Community College, Harris-Stowe, Jefferson College, Lincoln University, Metropolitan Community College, Moberly Area Community College, Missouri Southern State University, Missouri Western State University, Missouri State University, Northwest Missouri State University, Southeast Missouri State University, State Fair Community College, State Technical College of Missouri, St. Charles Community College, St. Louis Community College, Three Rivers Community College, Truman State University, University of Central Missouri and the University of Missouri did not respond to **Oversight's** request for fiscal impact.

Officials at the following school districts: Arcadia Valley R-2, Aurora R-8, Avilla R-13, Bakersfield, Belton, Benton County R-2, Bismark R-5, Bloomfield R-14, Blue Springs, Bolivar R-I, Bowling Green R-1, Branson, Brentwood, Bronaugh R-7, Campbell R-2, Carrollton R-7, Caruthersville, Cassville R-4, Central R-III, Chilhowee R-4, Chillicothe R-II, Clarkton C-4, Cole R-I, Columbia, Concordia R-2, Crawford County R-1, Crocker R-II, Delta C-7, East Carter R-2, East Newton R-6, Eldon R-I, Everton R-III, Fair Grove, Fair Play, Fayette R-3, Forsyth R-3, Fox C-6, Fredericktown R-I, Fulton, Grain Valley, Hancock Place, Hannibal, Harrisonburg R-8, Harrisonville, Hillsboro R-3, Hollister R-5, Humansville R-4, Hurley R-1, Independence,

ASSUMPTION (continued)

Jefferson City, Kansas City, Kearney R-1, Kennett #39, King City R-1, Kingston 42, Kirbyville R-VI, Laclede County R-1, Laredo R-7, Lee Summit, Leeton R-10, Lewis County C-1, Lindbergh, Lonedell R-14, Macon County R-1, Macon County R-4, Malta Bend, Mehville, Mexico, Middle Grove C-1, Midway R-1, Milan C-2, Moberly, Monroe City R-I, Morgan County R-2, New Haven, Nixa, North St. Francois Co. R-1, Northeast Nodaway R-5, Odessa R-VII, Oregon-Howell R-III, Orrick R-11, Osage County R-II, Osborn R-O, Parkway, Pattonville, Pettis County R-12, Pierce City, Plato R-5, Princeton R-5, Raymore-Peculiar R-III, Raytown, Reeds Springs R-IV, Renick R-5, Richland R-1, Riverview Gardens, Salisbury R-4, Sarcoxie R-2, Scotland County R-I, Sedalia, Seymour R-2, Shelby County R-4, Shell Knob #78, Sikeston, Silex, Slater, Smithville R-2, Special School District of St. Louis County, Spickard R-II, Springfield, St Joseph, St Louis, St. Charles, St. Elizabeth R-4, Sullivan, Tipton R-6, Valley R-6, Verona R-7, Warren County R-3, Warrensburg R-6, Webster Groves, West Plains R-VII, Westview C-6 and the Wright City R-2 School District did not respond to **Oversight's** request for fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2018 (10 Mo.)	FY 2019	FY 2020
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**WORKERS COMPENSATION
 ADMINISTRATIVE FUND**

Revenue reduction - DOLIR

Premium reduction - Shareholders with 40% or greater interest in S Corporations - Section 287.037	Up to <u>(\$64,333)</u>	Up to <u>(\$128,665)</u>	Up to <u>(\$128,665)</u>
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ESTIMATED NET EFFECT ON WORKERS' COMPENSATION ADMINISTRATIVE FUND	Up to <u>(\$64,333)</u>	Up to <u>(\$128,665)</u>	Up to <u>(\$128,665)</u>
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SECOND INJURY FUND

Revenue reduction - DOLIR

Premium reduction - Shareholders with 40% or greater interest in S Corporations - Section 287.037	Up to <u>(\$385,994)</u>	Up to <u>(\$771,987)</u>	Up to <u>(\$771,987)</u>
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ESTIMATED NET EFFECT ON SECOND INJURY FUND	Up to <u>(\$385,994)</u>	Up to <u>(\$771,987)</u>	Up to <u>(\$771,987)</u>
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<u>FISCAL IMPACT - State Government</u>	FY 2018	FY 2019	FY 2020
(continued)	(10 Mo.)		

LEGAL EXPENSE FUND

<u>Savings - Reduction in Claims</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>
Total Savings	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>

ESTIMATED NET EFFECT ON LEGAL EXPENSE FUND	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>
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<u>FISCAL IMPACT - Local Government</u>	FY2018	FY 2019	FY 2020
	(10 Mo.)		

LOCAL POLITICAL SUBDIVISIONS

<u>Savings - Reduction of Insurance</u>			
Liability Premiums and Smaller Claims	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>
Total Savings	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>

ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>
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FISCAL IMPACT - Small Business

A direct fiscal impact to small businesses could be expected as a result of this proposal. If small business owners exempt themselves from workers' compensation coverage as authorized by this proposal, these small business will reduce their business expenses.

FISCAL DESCRIPTION

This bill authorizes, beginning January 1, 2018, a shareholder of an S corporation with at least 40% interest in the corporation to elect to reject coverage under the Workers' Compensation Law by providing written notice to the corporation and its insurer. The rejection of coverage may be rescinded, however the shareholder will only be entitled to benefits that accrued on or after the date the notice is received by the insurance company.

The bill also defines "maximum medical improvement" for purposes of workers' compensation laws.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Labor and Industrial Relations
Department of Insurance, Financial Institutions and Professional Registration
Department of Conservation
Department of Corrections
Department of Transportation
Department of Public Safety - Highway Patrol
Joint Committee on Administrative Rules
Office of Administration - Accounting
Office of Administration - Facilities Management, Design and Construction
Office of Administration - General Services
Office of Administration - Purchasing
Office of Administration - Information Technology System Division
Office of Administration - Division of Purchasing and Materials and Management
Office of Secretary of State
Office of Prosecution Services
State Public Defender's Office
Callaway County
St. Louis County Department of Justice Services
Missouri State University
Northwest Missouri State University
State Technical College of Missouri
University of Central Missouri
University of Missouri
Kirksville R-III School District



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April 14, 2017

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